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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. [redacted] 116

[redacted]

THOMAS J. CRIDER,
Petitioner,

versus

ZURICH INSURANCE COMPANY,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 1061—Misc.

THOMAS J. CRIDER,
Petitioner,

versus

ZURICH INSURANCE COMPANY,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

STATEMENT OF THE CASE.

The sole issue is whether Crider, the Petitioner, can collect workman's compensation benefits under the Georgia Workmen's Compensation Law in an Alabama court proceeding.

The issue arises out of a suit in the District Court on a void judgment rendered by an Alabama trial court. Respondent moved to dismiss the case on the ground that

the judgment was void in that the Alabama court did not have jurisdiction of the subject matter of the suit. The issue here was raised by the District Court below granting the Respondent's motion to dismiss (R. 26-28; **Crider v. Zurich Insurance Company**, 224 F. Supp. 87 (N. D. Ala. 1963)) and the affirmance of the decision of the District Court by the Fifth Circuit Court of Appeals (R. 41; **Crider v. Zurich Insurance Company**, 324 F. 2d 499 (5th Cir. 1963)).

The Petitioner, plaintiff below, while an employee of Lawler Construction Company, Inc., a Georgia corporation, was injured on the 11th day of July, 1956, in DeKalb County, Alabama. Crider and Lawler were under and subject to the Workmen's Compensation Law of Georgia at the time Crider was injured. Both were under and subject to the Workmen's Compensation Law of Alabama. On the 3rd day of July, 1957, Crider instituted suit against Lawler in the Circuit Court of DeKalb County, Alabama, seeking recovery under three counts, the first count being under the Alabama Workmen's Compensation Law and counts two and three being under the common law (R. 8-9; see also Exhibit A of Appendix A). Respondent, Zurich Insurance Company, was not a party to this suit.

On February 10, 1959, Crider amended his complaint striking all of the original counts and his demand for a jury trial and added Count A claiming under the Georgia Workmen's Compensation Law (R. 8-9). A default judgment was entered in the case on the 11th day of February, 1959, awarding compensation to Crider under the Workmen's Compensation Law of the State of Georgia (R. 8-9).

The respondent, Zurich Insurance Company, defendant below, was the workmen's compensation insurer of Lawler and as such was in privity with Lawler. On February

15, 1960, Crider filed a suit on the judgment against respondent in the Circuit Court of Jefferson County, Alabama (Appendix A), to which complaint respondent filed special pleas setting up the Georgia Workmen's Compensation statute and attacking the DeKalb County Circuit Court judgment as being void for lack of jurisdiction of the subject matter. Petitioner's demurrer to the pleas were overruled and on March 13, 1963, Petitioner dismissed this suit after the Alabama Circuit Court's adverse ruling on his demurrer to the respondent's pleas (Appendix A).

On March 14, 1963, Crider filed a Civil Action in the United States District Court for the Northern District of Alabama which was a suit on the judgment rendered by the DeKalb County Circuit Court on February 11, 1959 (R. 1-3). To the Petitioner's complaint respondent filed a motion to dismiss (R. 4-7). The District Court on May 16, 1963, granted respondent's motion to dismiss (R. 26-28). The Court of Appeals of the Fifth Circuit affirmed the judgment of the District Court on November 21, 1963 (R. 41).

ARGUMENT.

I.

Where the Provision for the Liability Claimed Is Coupled With the Provision for a Special Remedy to Be Afforded Not by a Court But by a Commission, That Remedy Alone Must Be Employed and Resort to Court Action May Not Be Had for Relief.

The Circuit Court of DeKalb County, Alabama, was not free to enforce the Georgia Workmen's Compensation Act[1] and the judgment of the DeKalb County Circuit Court of Alabama on which the District Court suit was based is void and was subject to attack in the District Court. Crider, the Petitioner, was employed by Lawler to work in Alabama where he was injured. Both were under and subject to the Workmen's Compensation Law of the State of Georgia for the Georgia law gives extra territorial effect to its Workmen's Compensation Law.[2] Likewise, Crider and Lawler were under and subject to the Workmen's Compensation Law of Alabama. Alabama will apply

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[1] Singleton v. Hope Engineering Co., 223 Ala. 538, 137 So. 441 (1931); Green v. J. A. Jones Construction Company, 161 F. 2d 359 (5th Cir. 1947).

[2] Ga. Code, Title 114, Workmen's Compensation, Sec. 114-411:

"Accidents outside of State.—Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State; Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title."

its Compensation Law to an injury occurring in the State of Alabama.[3]

An Alabama Circuit Court can apply the Alabama Workmen's Compensation Law in a proceeding in the Alabama Court (Appendix B). But an Alabama Court cannot apply the Georgia Workmen's Compensation Law (Appendix C) in a proceeding in the Alabama Court. The remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act is an exclusive one which can be afforded only by the Georgia State Board of Workmen's Compensation (formerly named Industrial Board) in a proceeding brought before it as the statute provides (Appendix C). This has been established by the Georgia decisions.

Grice v. United States Fidelity & Guaranty Co., 187 Ga. 259, 200 S. E. 700;

Blue Bell Globe Mfg. Co. v. Baird, 64 Ga. App. 347, 13 S. E. 2d 105;

Echols v. Chattanooga Mercantile Co., Ga. App., 38 S. E. 2d 675.

The judgment is void for the DeKalb County Circuit Court did not have jurisdiction of the subject matter. 100 C. J. S., **Workmen's Compensation**, Sec. 426, page 285; **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359 (5th Cir. 1957); **Grenier v. Alta Crest Farms, Inc.**, 58 A. 2d 884.

The Fifth Circuit case of **Green v. J. A. Jones Construction Co.**, *supra*, is decisive of this point and there is no conflicting authority. Filed in the Circuit Court of Hinds County, Mississippi, and thence removed to the United States District Court, the suit was an original proceeding brought for compensation due plaintiff under the Georgia Workmen's Compensation Act. Moving to dismiss for want of jurisdiction, defendant urged that the remedy

[3] 99 C. J. S., Workmen's Compensation, Section 22.

afforded by the Georgia Workmen's Compensation Act was by an original proceeding before the Georgia State Board of Workmen's Compensation, that it was exclusive, and that neither the United States Court nor the Circuit Court of Hinds County, Mississippi, nor any other tribunal than the Georgia State Board had jurisdiction of it. The District Judge ruled that the motion was well taken and entered his order dismissing the cause for want of jurisdiction. The Fifth Circuit Court of Appeals agreed holding that the case was ruled by the principle that where the provision for the liability claimed is coupled with the provision for a special remedy to be afforded not by a court but by a commission, that remedy and that remedy alone must be employed and resort to court action may not be had for relief.

It has been held that the only actions to secure compensation under a foreign compensation act which cannot be enforced by the courts of the jurisdiction where the injury occurred are those where the right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the Act. It has been universally held that where the foreign act gives no independent cause of action enforceable anywhere, but merely provides an administrative remedy by prescribed procedure as a substitute for any cause of action that there might otherwise be, compensation cannot be awarded by the courts of another jurisdiction.[4]

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[4] "There are many cases where right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the Act. For the rule is well settled that where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed." Tenn. Coal, Iron & RR. Co. v. George, 233 U. S. 354, 35 S. Ct. 587, 58 L. Ed. 997; Pollard v. Bailey, 22 L. Ed. 376; Galveston, H. & S. A. R. Co. v. Wallace, 223 U. S. 490, 32 S. Ct. 205, 56 L. Ed. 522; Stewart v. Baltimore & Ohio RR. Co., 168 U. S. 445, 18 S. Ct. 105, 42 L. Ed. 537.

American Law Institute's Restatement, **Conflict of Laws**, is in accord with these holdings.[5]

The textwriters agree that a claim to be valid must follow the designated procedure, and under the requirement that only the special tribunal created by the particular state can administer claims thereunder, rights created by the compensation act of one state cannot ordinarily be enforced in another state or in a Federal Court.[6]

As was held in **Mosely v. Empire Gas & Fuel Co.**, 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223, a statute of Kansas cannot confer upon a Missouri court in a suit for money, a jurisdiction and a power wholly unknown to the Missouri Code of Procedure. Such a statute cannot do this directly nor can it do so indirectly through an attempted authorization of the Missouri Court to make rules necessary and appropriate to carry out the purpose of the Kansas statute. By that statute the right and remedy are so united, and the provision of liability is so coupled with a provision for a special remedy to be administered by designated tribunal with certain specific powers given that the remedy must be sought in the designated tribunal.

Many jurisdictions have refused to apply the Compensation Law of another state wherein the other state law pro-

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[5] Restatement, Conflict of Laws, Sec. 618. Conditional Cause of Action.—

"If a state makes the existence of a cause of action conditional on some act or event, no suit can be maintained in another state unless the condition is satisfied."

"Comment: a. Where a statutory foreclosure act requires that the land must first be applied to the satisfaction of the debt before a cause of action arises, no action will lie in another state to recover the amount due until the land has first been applied to the satisfaction of the debt. *So where a Workmen's Compensation Act provides for the fixing of the amount of compensation by a commission, no action can be brought on such a claim in another state until the amount of compensation has been so fixed*" (Emphasis supplied).

[6] Larson's Workmen's Compensation Law, Sec. 84.20. Page 356.

vided that the law be administered by an Industrial Commission or Workmen's Compensation Board.[7]

The United States Court of Appeals for the Tenth Circuit has recognized the rule of **Green v. J. A. Jones Construction Co.**, *supra*.[8]

In the case of **Grenier v. Alta Crest Farms**, 58 A. 2d 884, the plaintiff brought a suit against the defendant claiming compensation under the Workmen's Compensation Act of Massachusetts before the Industrial Relations Board of Vermont. Massachusetts had an Industrial Board. The Vermont Court held that the Vermont Board of Industrial Relations and the courts of Vermont did not have jurisdiction of the case.[9]

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[7] Logan v. Missouri Valley Bridge & Iron Co., 157 Ark. 528, 249 S. W. 21 (Arkansas refused to apply the Oklahoma Act);
Douthwright v. Champlin, 91 Conn. 524, 100 A. 97 (Connecticut refused to apply the Massachusetts Act);
Mosely v. Empire Gas & Fuel Co., 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223 (Missouri refused to apply the Kansas Act);
Davis v. Swift & Co., 175 Tenn. 210, 133 S. W. 2d 483 (Tennessee refused to apply the Florida Act);
Johnson v. Employers Liability Assurance Corp., 90 S. W. 2d 970 (Texas refused to apply the Louisiana Act);
Verdicchio v. McNab and Harlin Mfg. Co., 164 N. Y. S. 200, 178 App. Div. 48 (New York refused to apply the New Jersey Act);
Grenier v. Alta Crest Farms, 58 A. 2d 884 (Vermont refused to apply the Massachusetts Act).

[8] See Fresquez v. Farnsworth and Chambers Co., 238 F. 2d 709 (10th Cir. 1956), where the Court says:

> "But where a statute creates a right and provides a remedy for its enforcement in a certain tribunal, and the two are inseparably blended and united, the right can be enforced only in the specified tribunal. Pollard v. Bailey, 20 Wall. 520, 526, 527, 22 L. Ed. 376; Tenn. Coal, Iron & RR. Co. v. George, 233 U. S. 354, 34 S. Ct. 587, 58 L. Ed. 997."

[9] The Vermont Court correctly stated the appropriate principle:

> "* * * While the statutes give a right to compensation to an employee who comes within its terms, it also provides a specific and exclusive remedy for the enforcement of that right before a special tribunal created for such purpose. If an em-

Search as we may we have found no cases contrary to the holding of **Green v. J. A. Jones Construction Co.**, *supra*. The Petitioner has cited no cases in opposition to this holding. Petitioner seems to rest his argument on the proposition that the DeKalb County Circuit Court of Alabama was free to apply its own choice of law. Petitioner overlooks the Alabama case of **Singleton v. Hope Eng. Co.**, 223 Ala. 538, 137 So. 441 (1931). The Alabama Supreme Court has already held that the Courts in Alabama have no jurisdiction to litigate issues of fact arising under the Georgia Workmen's Compensation statute because such are vested exclusively under the Georgia Workmen's Compensation Board. In denying jurisdiction to a claim for benefits the Alabama Supreme Court said:

"The right sought to be enforced had its origin and existence in the Georgia Workmen's Compensation statute. The remedies for its breach are recoverable in the manner provided by proper pleading and

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ployee seeks the benefits given him by the statute he is bound to recognize and perform the obligation thereby placed upon him. Such right is limited and can be enforced only by following the procedure given by the statute which created such right. The remedy is an integral part of the right given and the latter has no existence separate and apart from the former. United States ex rel. Texas Portland Cement Co., etc. v. McCord, 233 U. S. 157, 34 S. Ct. 550, 552, 58 L. Ed. 893; Galveston H. & S. A. R. Co. v. Wallace, 223 U. S. 481, 490 32 S. Ct. 205, 56 L. Ed. 516; Globe Newspaper Co. v. Walker, 210 U. S. 356, 28 S. Ct. 726, 52 L. Ed. 1096; Fourth Natl. Bank v. Francklyn, 120 U. S. 747, 756, 7 S. Ct. 757, 30 L. Ed. 825; Pollard v. Bailey, 20 Wall. 520, 526, 527, 22 L. Ed. 376; Hartford Acc. & Ind. Co. et al. v. Delta & Pine Land Co., 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A. L. R. 928; Devine's Case, 236 Mass. 588, 592, 129 N. E. 414, 416; Migue's Case, 281 Mass. 373, 183 N. E. 847, 848."

* * * * * * * *

"It follows that the commissioner of industrial relations is without jurisdiction to entertain the petition filed with him in the case at bar. The employee has no right arising under the Massachusetts Workmen's Compensation Act, * * * which he can enforce before the commissioner or the courts of this state."

procedure before the industrial commission of our sister state."

The decision of the court below does not deny to the State of Alabama the freedom to adopt such rules governing conflict of laws as it chooses. The choice of laws has been made in Alabama. The Alabama Supreme Court has spoken.

Petitioner seems to place great reliance on **Alaska Packers Asso. v. Industrial Acc. Comm.**, 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044; **Pacific Employers Ins. Co. v. Industrial Acc. Comm.**, 306 U. S. 493, 59 S. Ct. 629, 83 L. Ed. 940; and **Carroll v. Lanza**, 349 U. S. 408, 75 S. Ct. 804, 99 L. Ed. 1183. These cases cited by the Petitioner are not inconsistent with the position taken throughout this case by the Respondent. None of the cases cited pronounce any principles contrary to the holdings in **Green v. J. A. Jones Construction Co.**, *supra*, and **Singleton v. Hope Eng. Co.**, *supra*. In **Alaska Packers Asso. v. Industrial Acc. Comm.**, the plaintiff was covered by the Alaska Compensation Law and was injured in Alaska. He had been employed in California. He applied for compensation under the California Compensation Law in California and this Court held that he could properly invoke the California Workmen's Compensation Law. This case is certainly not contrary to the holdings of the District Court and the Court of Appeals. It is recognized that Crider could have invoked the Alabama Workmen's Compensation Law in the DeKalb County Circuit Court. Petitioner recognized this. When the suit was first filed in the Circuit Court of DeKalb County, Alabama, Crider based his case on the Alabama Workmen's Compensation Law (R. 8-9; Exhibit A of Appendix A). In the **Alaska Packers Asso. Case** the workman did not seek to invoke the Alaska Law in the California Court. It should also be pointed out that this Court speaking through Mr.

Justice Stone made it plain that "we assume, as did the State Court, that the remedy provided in the Alaska statute is one which could also be applied by the California Courts, except for the conflict". The **Alaska Packers Asso. Case** sheds no light on the case at bar.

The case of **Pacific Employers Ins. Co. v. Industrial Acc. Comm.**, cited by the Petitioner, simply holds that the California Commission could apply the California Act to the claim of a Massachusetts employee against a Massachusetts employer for an injury suffered in California in the course of his employment. This case has no application to the principle involved in the case at bar.

In the case of **Carroll v. Lanza**, *supra*, cited by the Petitioner, the plaintiff, a resident of Missouri, was injured while working in Arkansas. He came under the Missouri Workmen's Compensation Act and received payments under that Act. While he was still receiving payments under the Missouri Act he brought this common law action in Arkansas. The Missouri Act provided that the rights and remedies granted by it shall exclude all other rights and remedies at common law or otherwise. The Supreme Court ruled that the Missouri statute was not a bar to the Arkansas common law remedy. So what has this got to do with the case at bar? If Petitioner Crider had brought a common law action in this state for injuries after he had previously received compensation from Georgia then apparently this case would have been controlling but needless to say this is not the situation here. As pointed out in the **Carroll Case** the full faith and credit clause does not require a state to substitute for its own statute applicable to persons and events within it the statute of another state reflecting the conflicting and opposing policy.

Petitioner's emphasis on **Pearson v. Northeast Airlines, Inc.**, 309 F. 2d 553 (2nd Cir. 1962), is strange and mis-

guided. Petitioner mistakes defense for a remedy—for an entire procedure. Petitioner was injured in Alabama. He first chose the Alabama law, the law of the place of injury. He abandoned the Alabama law. He chose then to try to come under the Georgia law. The Georgia law is administered by the State Workmen's Compensation Board. Even the Georgia Courts cannot administer the Georgia Act, let alone the Alabama courts. Petitioner's saying there is a conflict between the Court of Appeals for the Second and the Fifth Circuits does not make a conflict. There is no conflict and no basis for the grant of the writ.

It is quite clear that we would have a different situation if the Georgia Workmen's Compensation Act was administered by the Georgia Courts. The Georgia Act is administered by a State Board of Workmen's Compensation. The Alabama Workmen's Compensation Act is administered by the courts of the State of Alabama. As was said by the District Court to permit this original action in the Courts of Alabama to enforce a claim under the Georgia Workmen's Compensation Law is to allow an original proceeding in such courts where the same is denied to the Courts of Georgia.

Petitioner invoked the Alabama Workmen's Compensation Law. See his original complaint (R. 8-9; Exhibit A of Appendix A). The DeKalb County Circuit Court of Alabama would have had jurisdiction to apply the Workmen's Compensation Law of Alabama. Strangely the Petitioner decided to cast that aside and travel under the Georgia Workmen's Compensation Law.[10] The Alabama

[10] Compensation benefit under the Georgia Law (Ga. Code, Title 114, Sec. 404) was limited to $10,000. Benefits under the Alabama Workmen's Compensation Law would have amounted to $11,200. 1940 Ala. Code, Title 26, Sec. 279 (e) 3 and Sec. 280 (400 weeks at the rate of $28.00 per week).

Court did not have jurisdiction to make an award under the Georgia Workmen's Compensation Law. Its judgment is void for that reason.

II.

A Party or His Privies Will Be Permitted to Attack a Judgment Collaterally Where the Judgment Is Void for Want of Jurisdiction of the Court Over the Subject Matter.

The DeKalb County Circuit Court did not have jurisdiction of the subject matter. Therefore, the issue of jurisdiction is subject to inquiry. Judgments of courts can be impeached for jurisdictional defects disclosed on the face of the record. Where the record discloses a lack of jurisdiction the judgment is void. **City of Birmingham v. Reed**, 35 Ala. App. 31, 44 So. 2d 607; **Murphy v. L. & N.**, 258 Ala. 138, 61 So. 2d 3; **Crump v. Knight**, 256 Ala. 601, 56 So. 2d 625; **Freeman v. McBroom**, 11 Ala. 943.

It clearly appears on the face of the record that in the DeKalb County Circuit Court in which the judgment was obtained the judgment was rendered under the Workmen's Compensation Law of the State of Georgia. In fact, the complaint claims under the Workmen's Compensation Law of the State of Georgia and proof was made to the court under the Workmen's Compensation Law of the State of Georgia. The judgment was void for want of jurisdiction of the DeKalb County Circuit Court. Therefore, the judgment could be assailed in the District Court.

A party or his privies may assail such a judgment. **Fife v. Pioneer Lumber Co.**, 237 Ala. 92, 185 So. 759; **Cobbs v. Norville**, 227 Ala. 621, 151 So. 576.

Jurisdiction of a court over the subject matter is at all times open to inquiry either on appeal or when the judgment rendered is collaterally attacked and no consent, laches or solicitation of the parties can cure such defect.

City of Birmingham v. Reed, 35 Ala. App. 31, 44 So. 2d 607.

The Alabama Court in the case of **Murphy v. L. & N.**, 258 Ala. 138, 61 So. 2d 3, held:

> "Where the court is without jurisdiction of the res, the subject matter, * * * it is without jurisdiction as a matter of law and its finding is not *res judicata*."

And in the case of **Crump v. Knight**, 256 Ala. 601, 56 So. 2d 625, the Court held that "Courts acting without authority can impart no validity to their proceedings and their judgments are assailable in any proceedings."

It is axiomatic that the judgment of the Circuit Court of DeKalb County is void and could be attacked in this case. The Alabama Court in the case of **Woolf v. McGaugh**, 175 Ala. 299, 57 So. 754, quoting with approval the statement from **Freeman v. McBroom**, 11 Ala. 943, had this to say:

> "* * * It has frequently been held, in suits at law, that when the court has no jurisdiction of the subject matter in dispute, such want of jurisdiction cannot be waived by appearance, plea, consent, or in any other manner, and a judgment rendered in such case in favor of the plaintiff will be void."

III.

When a Judgment of a State Court Comes Under Consideration in a Court of the United States the Question of Jurisdiction of the State Court to Render the Judgment Is Open to Inquiry in the United States Court.[11]

In a suit in a United States Court on a judgment of a court of one of the states, full faith and credit requires

[11] Cooper v. Newell, 173 U. S. 555, 19 S. Ct. 506, 43 L. Ed. 808; Tilt v. Kelsey, 207 U. S. 43, 28 S. Ct. 1, 52 L. Ed. 95.

the enforcement of the judgment and prevents it from being collaterally attacked unless it is shown that the judgment was entered without jurisdiction. **People of State of New York ex rel. Halvey v. Halvey,**[12] 330 U. S. 610, 67 S. Ct. 903, 91 L. Ed. 1133; **Griffin v. Griffin,** 327 U. S. 220, 66 S. Ct. 556, 90 L. Ed. 635; **Adam v. Saenger,** 303 U. S. 59, 58 S. Ct. 454, 82 L. Ed. 649; **Merrell et al. v. United States et al.,** 140 F. 2d 602 (10th Cir. 1944).

The Court of Appeals' judgment was not in error in denying "full faith and credit" to the **void judgment** of the Circuit Court of DeKalb County, Alabama.

CONCLUSION.

There are no special and important reasons for the granting of the writ. This case does not involve a state court decision on a federal question of substance. Nor is the decision of the Court of Appeals of the Fifth Circuit of which the Petitioner seeks a review in conflict with a decision of another court of appeals on this matter. The judgment of the Court of Appeals does not decide a new question of federal importance and its decision is not in conflict with the applicable decisions of this Court. In truth, Petitioner would have this Court depart from its time honored decisions set out above and give validity to a **void judgment** rendered by an Alabama state trial court.

The United States Court of Appeals for the Fifth Circuit,[13] the District Court for the Northern District of Alabama,[14] the Supreme Court of Alabama,[15] and the Circuit

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[12] "If the court of the State which rendered the judgment had no jurisdiction over the person or the subject matter, the jurisdictional infirmity is not saved by the Full Faith and Credit Clause."

[13] Crider v. Zurich Insurance Company, 324 F. 2d 499; Green v. J. A. Jones Construction Company, supra.

[14] Crider v. Zurich Insurance Company, 224 F. Supp. 87.

[15] Singleton v. Hope Engineering Company, supra.

Court of Jefferson County, Alabama[16] have all correctly applied the law of the case. The Alabama courts have no jurisdiction of a claim for benefits under the Board administered Georgia Workmen's Compensation Law.

If (and what a big "if" it is) Alabama was free to make a choice of conflict of laws Petitioner's contention in this regard is still without merit. The Alabama Supreme Court has already made a choice of laws, which choice leaves the Petitioner dangling on the end of his big "if."

The petition for certiorari is not supported by sound "reason" and it is respectfully submitted that the petition should be denied.

FRANK E. SPAIN,
First National Building,
Birmingham, Alabama,
Attorney for Respondent

Of Counsel:

FOSTER ETHEREDGE,
SPAIN, GILLON & YOUNG,
First National Building,
Birmingham, Alabama.

Proof of Service.

I, Frank E. Spain, one of the attorneys for Zurich Insurance Company, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of March, 1964, I served copies of the foregoing Response to Petition for a Writ of Certiorari to the United States Court of Appeals for the

[16] Crider v. Zurich Insurance Company; See Appendix A, Order of Court wherein Circuit Court overruled Crider's demurrer to Zurich's pleas.

Fifth Circuit on the Petitioner by depositing the same in a United States Post Office with first-class postage prepaid, addressed to J. Terry Huffstutler, counsel of record for the Petitioner, at his Post Office address, First National Building, Birmingham 3, Alabama.

.....

Frank E. Spain,
First National Building,
Birmingham 3, Alabama,
Attorney for Zurich Insurance Company.

APPENDIX A.

Case of Thomas J. Crider v. Zurich Insurance Company.

In the
Circuit Court of Jefferson County, Alabama.

Complaint.

Thomas J. Crider,
Plaintiff,
vs.
Zurich Insurance Company, a Corporation,
Defendant.
} No. 48637-X.

Count 1:

Plaintiff claims of the defendant the sum of Ten Thousand Five Hundred Dollars ($10,500.00) together with interest at the rate of six percent (6%) per annum from February 11, 1959, for that plaintiff obtained a judgment in the Circuit Court of the Ninth Judicial Circuit of Alabama at Fort Payne, Alabama, on February 11, 1959, for the amount of Ten Thousand Five Hundred Dollars ($10,500.00) together with costs of court in the amount of One Hundred Dollars ($100.00) against his employer, A. H. Lawler Construction Company, a corporation, for injuries received by the plaintiff on July 11, 1956, while performing duties for his employer within the line and scope of his employment in DeKalb County, Alabama, and plaintiff avers that the defendant Zurich Insurance Company was the insurer of the said A. H. Lawler Construction Company, Inc., a corporation, for liability on workmen's compensation and for the injuries and damages

which plaintiff sustained on said occasion. And plaintiff avers that, under the said contract of insurance existing on said occasion between the defendant and the said A. H. Lawler Construction Company, Inc., a corporation, the defendant agreed that it could be sued by any person who had secured a judgment such as the one obtained by plaintiff against the said insured, A. H. Lawler Construction Company, Inc., a corporation.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

ZURICH'S PLEA AND ANSWER.

Comes the defendant and for plea and answer to the Complaint filed in this cause, and to each count thereof, separately and severally, and sets down and assigns, separately and severally, the following separate and several pleas:

Plea One: Not guilty.

Plea Two: The allegations of said count are untrue.

Plea Three: That the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the Judgment described in said Complaint and the Judgment is null and void.

Plea Four: Defendant avers that the Judgment described in plaintiff's Complaint was rendered by the Circuit Court of DeKalb County, Alabama, in Case No. 590. A true and correct copy of the portion of the record in said case, namely, the Complaint as Last Amended, and the Judgment of Court Awarding Compensation, is attached hereto, marked "Exhibit A" and "Exhibit B," respectively, and made a part hereof as if fully set out herein

at this point. Defendant further says that at all times mentioned in said Complaint and on the date of the said Judgment, it was the applicable law of the State of Georgia as contained in the Workmen's Compensation Law of that State, Title 114, Chapter 114-706, Georgia Code, Acts of the Georgia Legislature of 1920, page 197; 1937, pages 7 and 43; 1945, page 462; 1956, pages 725 and 726, that:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Com

plaint was rendered, and the Judgment is null and void. Therefore, the Defendant says the plaintiff should not recover of the defendant.

Plea Five: For purposes of this Plea, defendant adopts all of the averments of Plea Four down to and including the words "most convenient for a hearing" and in lieu of the averments following the said quoted words, says as follows: Further, it is the law of the State of Georgia, Title 114, Chapter 114-305, Georgia Code, Acts of the Georgia Legislature, 1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Complaint was rendered and the Judgment is null and void. Therefore, the Defendant says that the Plaintiff should not recover.

Plea Six: Defendant avers that at all times mentioned in said Complaint and on the date of said Judgment it was the law of the State of Georgia, as contained in the Workmen's Compensation Law of that State, Title 114, Chapter 114-305, Georgia Code, Acts of the Georgia Legislature of

1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter, except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

For the purposes of this Plea, defendant adopts the first paragraph of Plea Four, and defendant further says that the Circuit Court of DeKalb County, Alabama, was without jurisdiction of the subject matter of the Complaint as Last Amended for that the sole method of claiming compensation under the Georgia Workmen's Compensation Act is by the filing of a claim with the Georgia State Board of Workmen's Compensation within one year from the date of the accident, and defendant avers that the plaintiff did not file a claim with the Georgia State Board of Workmen's Compensation within one year after the accident described in the Complaint as Last Amended. Hence, the Judgment of the Circuit Court of DeKalb County, Alabama, is null and void and the plaintiff should not recover.

Plea Seven: For purposes of this Plea, defendant adopts the first paragraph of Plea Four, and defendant further says as follows: That at all times mentioned in said Complaint and on the date of said Judgment it was the applicable law of the State of Georgia as contained in the Workmen's Compensation Law of that State, Title 114,

Chapter 114-411, Georgia Code, Acts of the Georgia Legislature of 1920, page 187, that:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State; Provided, his contract of employment was not expressly for service exclusively outside of the State."

Defendant says that the accident described in said Complaint happened in the State of Alabama while the plaintiff, who was a resident of the State of Alabama, was employed in the State of Alabama. Defendant says further that the contract of employment by and between the plaintiff Crider and his employer, A. H. Lawler Construction Company, was made in the State of Alabama. Defendant says that the plaintiff was not entitled to compensation under the laws of the State of Georgia, and defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction to award the plaintiff compensation under the law of the State of Georgia, and that the Judgment of said Court is void.

Plea Eight: For purposes of this Plea defendant adopts the first paragraph of Plea Four. Defendant says that the statutes and laws of the State of Georgia were not pleaded by the plaintiff in the Complaint as Last Amended, and defendant says that the Circuit Court of DeKalb County, Alabama, had jurisdiction only to apply the common law of the State of Alabama as being one and the same as the State of Georgia. Therefore the defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction to award compensation under the Workmen's

Compensation Law of the State of Georgia, and not having jurisdiction of the subject matter of the suit the Judgment is void.

Plea Nine: For purposes of this Plea defendant adopts the first paragraph of Plea Four, and defendant says as follows: Further, it is the law of the State of Georgia, Title 114, Chapter 114-305, Georgia Code, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

Title 114, Chapter 114-411, Georgia Code:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State."

Title 114, Chapter 114-706, Georgia Code:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached

such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that only the State Board of Workmen's Compensation of the State of Georgia had jurisdiction to award the plaintiff workmen's compensation under the Workmen's Compensation Law of the State of Georgia, and that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Complaint was rendered. Therefore, the Judgment is void and the plaintiff should not recover.

Plea Ten: For purposes of this Plea, defendant adopts all of the averments of Plea Nine down to and including the quoted words "be the most convenient for a hearing" and in lieu of the averments following the said

quoted words, says as follows: Defendant says that it issued to A. H. Lawler Construction Company a Workmen's Compensation Policy, No. 68-820, and a true and correct copy of said policy is attached hereto and marked "Exhibit C" and made a part hereof as if fully set out herein at this point. Defendant says that Item 3 of the Insuring Agreement of said policy provides that Coverage A of the policy applies to the Workmen's Compensation Law of the State of Georgia, and defendant says that its policy did not apply to the Compensation Law of the State of Alabama, and defendant further says that the coverage afforded by its said policy did not apply to the accident described in plaintiff's Complaint.

Plea Eleven: For purposes of this Plea, defendant adopts all of the averments of Plea Ten down to and including the words "Coverage A of the policy applies to the Workmen's Compensation Law of the State of Georgia", and defendant says as follows: The accident described in plaintiff's Complaint happened in the State of Alabama. The contract of employment was made in the State of Alabama, and the residence of the plaintiff Crider was in the State of Alabama. Defendant further says that the contract of employment by and between the plaintiff Crider and his employer, A. H. Lawler Construction Company, was made expressly for service exclusively outside of the State of Georgia. The plaintiff was not entitled to compensation under the laws of the State of Georgia. Hence, the coverage afforded by defendant's said policy of insurance did not apply to the accident described in plaintiff's Complaint, and the plaintiff should not recover.

Plea Twelve: Defendant says that in its policy of insurance sued on, it is provided as follows:

> "If claim is made or suit or other proceeding is brought against the insured, the insured shall imme-

diately forward to the company every demand, notice, summons or other process received by him or his representative."

The policy provides further that:

"No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, * * *."

Defendant says that the insured named in the policy, A. H. Lawler Construction Company, did not immediately forward to the Company every demand, notice, summons or other process received by it or its representative. Defendant says that it did not receive any notice of the plaintiff's suit in the Circuit Court of DeKalb County, Alabama. Therefore, defendant says that the plaintiff cannot recover.

Plea Thirteen: For the purposes of this Plea, defendant adopts all of the averments of paragraph one of Plea Four. Defendant says that plaintiff, on February 10, 1959, filed his amended complaint, which was an entirely new and different cause of action from that averred in the original complaint, a copy of which is attached hereto and marked "Exhibit D", and made a part hereof as if fully set out herein at this point, and that the Circuit Court of DeKalb County, Alabama, on February 11, 1959, rendered its Judgment of Court Awarding Compensation upon said Complaint as Last Amended, and defendant further says that the Complaint as Last Amended was never served upon A. H. Lawler Construction Company. Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction over the person of A. H. Lawler Construction Company, and the Judgment of that Court described in plaintiff's Complaint is void.

/s/ Spain, Gillon & Young.
Attorneys for Zurich Insurance Company

EXHIBIT A TO ZURICH'S PLEA AND ANSWER.

Complaint.

In the Circuit Court of DeKalb County, Alabama.

Thomas J. Crider, Plaintiff,
vs.
A. H. Lawler Construction Company, Inc., a Corporation, Defendant.
No. 590.

Count 1:

Plaintiff claims of the defendant benefits under the Workmen's Compensation Laws of Alabama due and owing under the following statement of facts: On July 11, 1956, the relation of employer and employee, or master and servant, existed between defendant, A. H. Lawler Construction Company, Inc., a foreign corporation, doing business in Alabama, and plaintiff; and defendant and plaintiff were subject to the Workmen's Compensation Laws of Alabama; and, while so employed and engaged in the business of the defendant, and while acting within the line and scope of his employment with said defendant, plaintiff suffered an accident, which arose out of and in the course of said employment. As a proximate result of said accident, plaintiff has been totally disabled. A controvery has arisen as to the benefits to be paid under the Workmen's Compensation Laws of Alabama.

Plaintiff's name is Thomas J. Crider, and he resides at Valley Head, Alabama. The defendant's name is A. H. Lawler Construction Company, Inc., a foreign corporation, whose address is Perry, Georgia.

At the time of the said accident, on, to-wit, July 11, 1956, plaintiff was assisting another employee of defendant in the repair of a bulldozer belonging to defendant, at or near Valley Head, DeKalb County, Alabama, and, while plaintiff was thus engaged in assisting in said repairs of said bulldozer, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was permanently injured; and he suffered numerous other injuries.

Plaintiff avers that defendant, A. H. Lawler Construction Company, Inc., had prompt and immediate notice of said accident but that the said defendant has failed or refused to pay any of the medical or hospital expenses of plaintiff, and said defendant has not paid plaintiff any benefits whatsoever under the Workmen's Compensation Laws of Alabama.

Plaintiff avers that, at the time of the said injuries, he was receiving wages in the sum of not less than Forty Dollars ($40.00) a week. Plaintiff further avers that he is totally disabled and that, as a proximate result, he has not been able to work since the date of said injuries to the present date.

Wherefore, plaintiff claims of the defendant such benefits as he is entitled to receive under the Workmen's Compensation Laws of Alabama. He prays that notice may

be given the defendant and that hearing may be had, all in accordance with the laws and rules of this Honorable Court.

Count 2:

Plaintiff claims of the defendant the sum of One Hundred Fifty Thousand Dollars ($150,000.00) as damages for that heretofore, on, to-wit, July 11, 1956, the defendant was engaged in the construction of dirt roads at or near Valley Head, DeKalb County, Alabama, and the plaintiff avers that, at said time and place, he was a casual employee of the defendant. And plaintiff avers that, while he was acting within the line and scope of his employment as such casual employee of the defendant, he was assisting another employee of defendant, namely, Mack E. Walker, who was then and there acting within the line and scope of his said employment, to repair a bulldozer belonging to the defendant, and then and there the said Mack E. Walker, while acting within the line and scope of his employment as a servant, agent or employee of the defendant, allowed or caused the A-frame and blade of the said bulldozer to fall upon plaintiff and, as a proximate consequence thereof, plaintiff was injured and damaged as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was otherwise injured; he was permanently injured; and plaintiff was put to much trouble, annoyance, inconvenience and great expense in and about procuring doctors and medicines, medical aid and atten-

tion in an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused as a proximate consequence of the negligence of Mack B. Walker, the servant, agent or employee of the defendant, while acting within the line and scope of his employment, in allowing or causing the said A-frame and blade of the said bulldozer to fall upon plaintiff at the time and place and on the occasion aforesaid.

Count 3:

Plaintiff claims of the defendant the sum of One Hundred Fifty Thousand Dollars ($150,000.00) as damages for that, heretofore, on, to-wit, July 11, 1956, the defendant was working in the construction of dirt roads at or near Valley Head, DeKalb County, Alabama, and that plaintiff avers that, at said time and place, he was a casual employee of the defendant. And plaintiff avers that, while he was acting within the line and scope of his employment as such casual employee of the defendant, he was assisting another employee of defendant, namely, Mack B. Walker, who was then and there acting within the line and scope of his said employment, to repair a bulldozer belonging to the defendant. And plaintiff avers that, while he was thus employed and was underneath the said bulldozer assisting to make said repairs, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured and damaged as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and

shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was otherwise injured; he was permanently injured; and plaintiff was put to much trouble, annoyance, inconvenience and great expense in and about procuring doctors and medicines, medical aid and attention in an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused by reason of the defects in the condition of the said bulldozer and that the defendant knew of the defects existing in said bulldozer prior to the date plaintiff was injured.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

Plaintiff demands a jury trial.

/s/ J. Terry Huffstutler,
Attorney for Plaintiff.

Amended Complaint.

Now comes the plaintiff and, with leave of the Court first had and obtained, amends his complaint heretofore filed in this cause as follows:

1. By adding the following count:

Count A: Plaintiff claims of the defendant benefits under the workmen's compensation laws of Georgia due and owing under the following statement of facts:

On July 11, 1956, the relation of employer and employee or master and servant, existed between defendant, A. H. Lawler Construction Company, Inc., a Georgia corporation,

doing business in Alabama; and plaintiff and defendant were subject to the workmen's compensation laws of Georgia; and, while so employed and engaged in the business of defendant, and while acting within the line and scope of his employment with said defendant, plaintiff suffered an accident, which arose out of and in the course of said employment. As a proximate result of said accident, plaintiff has been totally and permanently disabled. A controversy has arisen as to the benefits to be paid under the workmen's compensation laws of Georgia. Plaintiff's name is Thomas J. Crider, and he resides at Valley Head, Alabama. The defendant's name is A. H. Lawler Construction Company, Inc., a foreign corporation, whose address is Perry, Georgia.

At the time of the said accident, on, to-wit, July 11, 1956, plaintiff was assisting another employee of defendant in the repair of a bulldozer belonging to defendant, at or near Valley Head, DeKalb County, Alabama, and, while plaintiff was thus engaged in assisting in said repairs of said bulldozer, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was permanently injured; and he suffered numerous other injuries.

Plaintiff avers that defendant, A. H. Lawler Construction Company, Inc., had prompt and immediate notice

of said accident but that said defendant has failed or refused to pay any of the medical or hospital expenses of plaintiff, and said defendant has not paid plaintiff any benefits whatsoever under the workmen's compensation laws of Georgia.

Plaintiff avers that, at the time of the said injuries, he was receiving wages in the sum of not less than $40.00 a week. Plaintiff further avers that he is totally and permanently disabled and that, as a proximate result, he has not been able to work since the date of said injuries to the present date.

Wherefore, plaintiff claims of the defendant such benefits as he is entitled to receive under the workmen's compensation laws of Georgia.

2. By striking Counts 1, 2 and 3 of the complaint heretofore filed in this cause.

3. By waiving the demand for a jury trial.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

EXHIBIT B TO ZURICH'S PLEA AND ANSWER.

Judgment of Court Awarding Compensation.

This day came the plaintiff, Thomas J. Crider with his attorney, J. Terry Huffstutler; and the defendant, A. H. Lawler Construction Company, Inc., a corporation, failing to appear (the Court having granted the request of the withdrawal as attorney for the defendant made by Hon. W. M. Beck and the Court further being satisfied that defendant was notified of the withdrawal of representation by Hon. W. M. Beck); and after hearing the evidence on the amended complaint of plaintiff, the Court is of the

opinion that the plaintiff is totally and permanently disabled as a result of the injuries sustained while acting within the line and scope of his employment for the defendant, and it is the judgment of the Court, that compensation be and the same is hereby awarded to the plaintiff in the sum of Ten Thousand Dollars ($10,000.00) and the further sum of Five Hundred Dollars ($500.00) for medical expenses.

It is, therefore, considered, ordered and adjudged by the Court that the plaintiff have and recover from the defendant the said sum of Ten Thousand Five Hundred Dollars ($10,500.00) in one lump sum, together with costs in this behalf expended, for all of which execution may issue.

It is further considered and ordered by the Court, and it is the judgment of the Court, that the attorney's fee of J. Terry Huffstutler, for the plaintiff, be and the same is hereby fixed at Three Thousand Five Hundred Dollars ($3,500.00).

The foregoing order and judgment entered this 11 day of February, 1959.

/s/ W. J. Haralson,
Circuit Judge.

Crider's Demurrer to Pleas of Defendant.

Comes the plaintiff and demurs to defendant's special pleas three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, and for grounds of demurrer assigns separately and severally, the following:

1. Said pleas present an immaterial issue.

2. Said pleas confess the averments of the complaint but do not set up a sufficient defense to avoid said averments.

3. For that the averments contained in said pleas are conclusions of the defendant and do not state facts constituting defenses.

4. For that said pleas contain no averments that remove the judgment obtained in the Circuit Court of DeKalb County from the rule as to the conclusiveness of judgments rendered by Courts of competent jurisdiction in all kinds of judicial proceedings.

5. For that said pleas fail to make sufficient averments under the applicable law of this State to remove the judgment rendered by the Circuit Court of DeKalb County from the doctrine of res judicata.

6. For that said pleas fail to sufficiently aver facts to remove the judgment rendered by the Circuit Court of DeKalb County from the rule of law of this State that a final judgment is conclusive as to all facts or issues decided therein and binds not only those who were parties to the litigation but also persons who are in privity with them.

7. For that said pleas fail to sufficiently aver facts to remove the judgment rendered by the Circuit Court of DeKalb County from the rule of law of this State that a final judgment on the merits rendered in a former suit between the same parties or their privies upon the same cause of action, by a court of competent jurisdiction, is conclusive, not only as to all matters determined, but also is conclusive as to any matter which might or ought to have been litigated.

/s/ J. Terry Huffstutler,
/s/ J. Terry Huffstutler,
Attorney for Plaintiff.

Crider's Amended Demurrer to Pleas of Defendant.

Comes the plaintiff and with leave of the Court first had and obtained amends its demurrer heretofore filed to the pleas of the defendant and separately and severally assigns the following separate and several grounds:

8. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is a bald conclusion of the pleader.

9. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is an unauthorized conclusion of the pleader.

10. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is a conclusion of law not authorized by any of the pleadings filed in this instant case.

11. Said plea 3 is insufficient in that it does not undertake to allege, state, or outline the facts on which the conclusion is made that the court had no jurisdiction to render the judgment described in said complaint.

12. Aught appearing to the contrary the trial court rendering said judgment had jurisdiction of said matter under the principles of comity obtaining in this state.

13. It is not stated wherein or how the actions of said trial court rendering said judgment counted on in the complaint violated any of the laws of the State of Alabama.

14. It is not stated wherein or how the actions of said trial court rendering said judgment counted on in the complaint violated any of the laws of the State of Georgia.

15. The mere union of substantive rights and procedural matters under the laws of the State of Georgia will not preclude the enforcement of the judgment secured by the plaintiff; it appearing that the foreign procedural provisions are not inseparably connected with substantive rights in order to preserve the integrity of such rights.

16. It affirmatively appearing that the defendant in the instant case was not a party to case No. 590 heretofore rendered by the Circuit Court of DeKalb County, Alabama, the defendant in the instant case cannot proceed in this cause under said plea 3, or plea 4, in that this defendant Zurich Insurance Company, a corporation, was not a party to said case No. 590.

17. Said plea 4, and the allegations therein constitute a collateral attack on the said judgment.

18. For that it affirmatively appears that the allegations in said pleas separately and severally, except plea 1 are not direct attacks on said judgment but are collateral attacks.

19. Each of said pleas, separately and severally, are deficient in that the defendant in case No. 590, in which A. H. Lawler Construction Company, Inc., a corporation, was the defendant and the only defendant is not joined as a party plaintiff or a party defendant in the instant case.

20. It appearing that the defendant in the instant case, No. 48637-X in this court and A. H. Lawler Construction Company, Inc., a corporation, were in privity one with the other at the time of the accident complained of and at the time of the employment of the plaintiff by the defendant or its authorized servants or agents, said judgment rendered in case 590 cannot be attacked by them separately.

21. Each of said pleas, except the plea of the general issue, seek to stop the enforcement of the judgment sued

on and are defective in that all parties to the judgment and all parties who will be directly affected if said judgment be declared void or set aside, are indispensable parties to the suit to set aside the said judgment.

22. Said judgment herein sued on is "res judicata" upon the employer and its privy, Zurich Insurance Company, a corporation, and the defendant in this case, and said judgment is therefore not subject to collateral attack.

23. For that it appears that said judgment herein sued on stands unreversed and is binding res judicata upon the parties thereto and their privies, including the defendant in the case at bar.

24. For that it affirmatively appears that the said judgment sued on cannot be collaterally attacked by the defendant in this case, since the facts pleaded show that the defendant in this instant case was in privity with the defendant in the case wherein the judgment sued on was rendered.

25. For that it appears that the judgment sued on was rendered in a court that had the right to decide as to its own jurisdiction and that its decision in favor of that jurisdiction, has the same effect and conclusiveness as its decision in any other matter and cannot be attacked collaterally.

/s/ J. Terry Huffstutler.
J. Terry Huffstutler,
Attorney for Plaintiff.

ORDERS OF COURT.

7-14-61: Demurrer to each of defendant's pleas is hereby overruled and this case is set for further pleading on August 16th, 1961 at 10:00 A. M. /s/ Ingram Beasley, Judge.

11-20-61: Plaintiff amends demurrer to defendant's pleas by adding grounds 8 through 25. /s/ Ingram Beasley, Judge.

2-16-62: Demurrer as last amended to defendant's pleas 5 through 13 is hereby overruled and this case is continued to Mar. 9th, 1962 at 11:00 A. M. for further pleading. /s/ Ingram Beasley, Judge.

3-13-63: Dismissed on motion of plaintiff without prejudice and all costs taxed against plaintiff. /s/ Ingram Beasley, Judge.

I, Julian Swift, Clerk of the Circuit Court, Tenth Judicial Circuit of the State of Alabama in and for the County of Jefferson do hereby certify the foregoing to be a true and correct copy of the court orders in this case. Recorded in Minute Book 277, page 211.

Witness my hand and seal this the 2nd day of March, 1964.

/s/ Julian Swift,
Clerk, Circuit Court.

(Seal)

APPENDIX B.

Workmen's Compensation Law of Alabama, Code of Alabama, Tit. 26, Sec. 297.

§ 297. (7571) **Controversy submitted to circuit court; jury trial; appeal, etc.**—A. **Controversy submitted to circuit court.** In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under articles 1 and 2 of this chapter, or the amount thereof, either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil case in tort between the same parties. Such controversy shall be heard and determined by such judge or judges of said court as would hear and determine a civil action between the same parties arising out of tort and in case there is more than one judge of such court, such controversies shall be set and assigned for hearing under the same rules and statutes that civil actions in tort are set and assigned; such court may hear and determine such controversies in a summary manner. The decision of the judge hearing the same shall be conclusive and binding between the parties, subject to the right of appeal in this article provided for. B. **Jury trial.** When wilful misconduct on the part of the employee is set up by the employer, as it is provided for herein, the employer may, upon appearing, demand a jury to hear and determine, under the direction of the court, the issues involved in this defense. If the employer fails to demand a jury upon appearing, the employee may demand a jury to try such issues, by filing his demand within five days after the appearance of the employer. When a jury is demanded by either party, the court must submit the issues of fact as to wilful misconduct set up by the employer to the jury, for a special finding of the facts subject to the usual

powers of the court over verdicts rendered contrary to the evidence or the law, but the judge must determine all other questions involved in the controversy without a jury. Upon setting up such defense, the employer must serve a copy of the plea or answer, setting up the defense, upon the employee or his attorney of record. C. **Court always open.** For the purpose of hearing and determining controversies between employer and employee or the dependents of a deceased employee and the employer, arising under articles 1 and 2 of this chapter, the circuit court shall be deemed always in session. D. **Adverse claimants.** If at any time there are adverse claimants to compensation hereunder, the employer in submitting said claim to said circuit court may suggest in writing said claimants and they shall be required to interplead and said court shall determine and decree to which claimant or claimants such compensation is justly due and said employer upon complying with the order of such judge, shall be released from the claims of any other claimants thereto. E. **Appeal by certiorari.** From such decree any aggrieved party may by certiorari within thirty days thereafter appeal to the supreme court or the court of appeals of Alabama. (1919,

APPENDIX C.

Workmen's Compensation Law of Georgia
Ga. Code Ann., Chapter 114.

114-103. Other remedies excluded by this law.—The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury loss of service or death. (Acts 1920, p. 176.)

114-305. Time of filing claim.—The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply. (Acts 1920, p. 181; 1925, pp. 282, 284; 1931, pp. 7, 43.)

114-705. Agreements as to compensation, filing of.—If, after 14 days from the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Title, a memorandum of the agreement in the form prescribed by the State Board of Workmen's Compensation shall be filed with the Board for approval as herein provided; otherwise such agreement shall be voidable by the employee or his dependents. If

approved by the Board, thereupon the memorandum shall for all purposes be enforced by decree or judgment of the superior court, as herein specified. (Acts 1920, p. 196; 1931, pp. 7, 43.)

114.706. Hearings regarding disagreements.—If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing. If either party in the matter of disagreement scheduled for a hearing desires to take evidence in any county of this State other than the county of the original accident and injury, or the county of the employee's residence, as the case may be, they may do so by making application either to the Board or the hearing member of said issues in dispute, and if in the discretion of the Board or the hearing member it is deemed that the evidence is material

and necessary to a fair and just adjudication of said issue or issues. The Board or hearing member shall have authority to continue said hearings for the purpose of taking said evidence in any other county of this State, and shall either schedule the hearing for the taking of said evidence in any county of the State of Georgia, or shall direct that the evidence be taken by deposition under the rules now required for taking depositions in civil cases of this State: Provided that if the Board or member directs the parties to take evidence by deposition, the party or parties taking said depositions shall forward the same to the secretary and treasury of the State Board of Workmen's Compensation in the same manner as depositions are filed with the clerks of the superior courts in other cases. If either party at issue desires to take the testimony of witnesses without the State the Board or the member may authorize any officer or employee of the authority charged with administering the workmen's compensation laws of the State where such testimony is to be taken to act as commissioner for the taking of the same, or it may direct the taking of such testimony under the same rules now pertaining to the taking of testimony of persons without the State in civil cases. After notice of a hearing has been given by the Board, either party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery, under the same requirements now provided for the taking of depositions upon oral examinations or written interrogatories in civil cases in the superior court. (Acts 1920, p. 197; 1931, pp. 7, 43; 1945, p. 462; 1956, pp. 725, 726.)